

1 Alan E. Wisotsky (SBN 68051)
 Jeffrey Held (SBN 106991)
 2 Dirk DeGenna (SBN 188972)
 LAW OFFICES OF ALAN E. WISOTSKY
 3 300 Esplanade Drive, Suite 1500
 Oxnard, California 93036
 4 Tel: (805) 278-0920
 Fax: (805) 278-0289
 5 E-mail: lawyers@wisotskylaw.com

6 Attorneys for Defendants CITY OF OXNARD,
 OXNARD POLICE DEPARTMENT, JOHN CROMBACH,
 7 and ANDREW SALINAS

8 **UNITED STATES DISTRICT COURT**
 9 **CENTRAL DISTRICT OF CALIFORNIA**

10
 11 MARIA LAZOS, et al.,) No. CV 08-02987 RGK (SHx)
)
 12 Plaintiffs,) [consolidated w/
) No. CV 08-05153 RGK (SH)]
 13 v.)
) **JOINT JURY INSTRUCTIONS**
 14 CITY OF OXNARD, et al.,)
) PTC : July 27, 2009
 15 Defendants.)
) Trial: August 11, 2009
 16 Time : 9:00 a.m.
) AND CONSOLIDATED ACTION.) Ctrm : 850 Roybal
 17)
 18)

19 The parties hereto submit the following joint jury
 20 instructions.

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Dated: July ____, 2009

KIM D. SCOVIS
Attorney for Plaintiffs
MARIA LAZOS and THE ESTATE OF
THOMAS BARRERA

Dated: July ____, 2009

GREGORY A. YATES
Attorney for Plaintiff
TOMAS BARRERA, SR.

Dated: July ____, 2009

DIRK DeGENNA
Attorney for Defendants
CITY OF OXNARD, OXNARD POLICE
DEPARTMENT, JOHN CROMBACH, and
ANDREW SALINAS

1.1C DUTY OF JURY

Members of the Jury: Now that you have heard all of the evidence and the arguments of the attorneys, it is my duty to instruct you as to the law of the case.

A copy of these instructions will be sent with you to the jury room when you deliberate.

You must not infer from these instructions or from anything I may say or do as indicating that I have an opinion regarding the evidence or what your verdict should be.

It is your duty to find the facts from all the evidence in the case. To those facts you will apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. And you must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. That means that you must decide the case solely on the evidence before you. You will recall that you took an oath to do so.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all important.

1 1.3 BURDEN OF PROOF — PREPONDERANCE OF THE EVIDENCE
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3 When a party has the burden of proof on any claim or
4 affirmative defense by a preponderance of the evidence, it means
5 you must be persuaded by the evidence that the claim or affirmative
6 defense is more probably true than not true.

7 You should base your decision on all of the evidence,
8 regardless of which party presented it.
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1.5 TWO OR MORE PARTIES — DIFFERENT LEGAL RIGHTS

You should decide the case as to each party separately. Unless otherwise stated, the instructions apply to all parties.

1.6 WHAT IS EVIDENCE

The evidence you are to consider in deciding what the facts are consists of:

1. the sworn testimony of any witness;
2. the exhibits which are received into evidence; and
3. any facts to which the lawyers have agreed.

1.7 WHAT IS NOT EVIDENCE

In reaching your verdict, you may consider only the testimony and exhibits received into evidence. Certain things are not evidence, and you may not consider them in deciding what the facts are. I will list them for you:

(1) Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they have said in their opening statements, closing arguments, and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, your memory of them controls.

(2) Questions and objections by lawyers are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the objection or by the court's ruling on it.

(3) Testimony that has been excluded or stricken, or that you have been instructed to disregard, is not evidence and must not be considered. In addition sometimes testimony and exhibits are received only for a limited purpose; when I have given a limiting instruction, you must follow it.

(4) Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

1.8 EVIDENCE FOR LIMITED PURPOSE

Some evidence may be admitted for a limited purpose only.

When I instruct you that an item of evidence has been admitted for a limited purpose, you must consider it only for that limited purpose and for no other.

1.9 DIRECT AND CIRCUMSTANTIAL EVIDENCE

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is proof of one or more facts from which you could find another fact. You should consider both kinds of evidence. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

1.10 RULING ON OBJECTIONS

There are rules of evidence that control what can be received into evidence. When a lawyer asks a question or offers an exhibit into evidence and a lawyer on the other side thinks that it is not permitted by the rules of evidence, that lawyer may object. If I overrule the objection, the question may be answered or the exhibit received. If I sustain the objection, the question cannot be answered, and the exhibit cannot be received. Whenever I sustain an objection to a question, you must ignore the question and must not guess what the answer might have been.

Sometimes I may order that evidence be stricken from the record and that you disregard or ignore the evidence. That means that when you are deciding the case, you must not consider the evidence that I told you to disregard.

1.11 CREDIBILITY OF WITNESSES

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it. Proof of a fact does not necessarily depend on the number of witnesses who testify about it.

In considering the testimony of any witness, you may take into account:

- (1) the opportunity and ability of the witness to see or hear or know the things testified to;
- (2) the witness's memory;
- (3) the witness's manner while testifying;
- (4) the witness's interest in the outcome of the case and any bias or prejudice;
- (5) whether other evidence contradicted the witness's testimony;
- (6) the reasonableness of the witness's testimony in light of all the evidence; and
- (7) any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify about it.

1.12 CONDUCT OF THE JURY

I will now say a few words about your conduct as jurors.

First, you are not to discuss this case with anyone, including members of your family, people involved in the trial, or anyone else; this includes discussing the case in internet chat rooms or through internet "blogs," internet bulletin boards or e-mails. Nor are you allowed to permit others to discuss the case with you. If anyone approaches you and tries to talk to you about the case, please let me know about it immediately;

Second, do not read or listen to any news stories, articles, radio, television, or online reports about the case or about anyone who has anything to do with it;

Third, do not do any research, such as consulting dictionaries, searching the Internet or using other reference materials, and do not make any investigation about the case on your own;

Fourth, if you need to communicate with me simply give a signed note to the clerk to give to me; and

Fifth, do not make up your mind about what the verdict should be until after you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence. Keep an open mind until then.

Finally, until this case is given to you for your deliberation and verdict, you are not to discuss the case with your fellow jurors.

1.13 NO TRANSCRIPT AVAILABLE TO JURY

During deliberations, you will have to make your decision based on what you recall of the evidence. You will not have a transcript of the trial. I urge you to pay close attention to the testimony as it is given.

If at any time you cannot hear or see the testimony, evidence, questions or arguments, let me know so that I can correct the problem.

1.14 TAKING NOTES

If you wish, you may take notes to help you remember the evidence. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. Do not let note-taking distract you. When you leave, your notes should be left in the courtroom. No one will read your notes. They will be destroyed at the conclusion of the case.

Whether or not you take notes, you should rely on your own memory of the evidence. Notes are only to assist your memory. You should not be overly influenced by your notes or those of your fellow jurors.

1.16 JURY TO BE GUIDED BY OFFICIAL ENGLISH
TRANSLATION/INTERPRETATION

Languages other than English may be used during this trial.

The evidence to be considered by you is only that provided through the official court interpreters. Although some of you may know Spanish, it is important that all jurors consider the same evidence. Therefore, you must accept the English interpretation. You must disregard any different meaning.

1.17 USE OF INTERPRETERS IN COURT

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3 You may not make any assumptions about a witness or a party
4 based solely upon the use of an interpreter to assist that witness
or party.
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1.18 BENCH CONFERENCES AND RECESSES

From time to time during the trial, it became necessary for me to talk with the attorneys out of the hearing of the jury, either by having a conference at the bench when the jury was present in the courtroom, or by calling a recess. Please understand that while you were waiting, we were working. The purpose of these conferences is not to keep relevant information from you, but to decide how certain evidence is to be treated under the rules of evidence and to avoid confusion and error.

Of course, we have done what we can to keep the number and length of these conferences to a minimum. I did not always grant an attorney's request for a conference. Do not consider my granting or denying a request for a conference as any indication of my opinion of the case or of what your verdict should be.

1.19 OUTLINE OF TRIAL

Trials proceed in the following way: First, each side may make an opening statement. An opening statement is not evidence. It is simply an outline to help you understand what that party expects the evidence will show. A party is not required to make an opening statement.

The plaintiff will then present evidence, and counsel for the defendant may cross-examine. Then the defendant may present evidence, and counsel for the plaintiff may cross-examine.

After the evidence has been presented, I will instruct you on the law that applies to the case and the attorneys will make closing arguments.

After that, you will go to the jury room to deliberate on your verdict.

2.5 TRANSCRIPT OF TAPE RECORDING

You have listened to a tape recording that has been received in evidence. Each of you was given a transcript of the recording to help you identify speakers and as a guide to help you listen to the tape. However, bear in mind that the tape recording is the evidence, not the transcript. If you heard something different from what appeared in the transcript, what you heard is controlling. After the tape has been played, the transcript will be taken from you.

2.7 FOREIGN LANGUAGE TESTIMONY

Witnesses who do not speak English or are more proficient in another language testify through an official court interpreter. Although some of you may know Spanish, it is important that all jurors consider the same evidence. Therefore, you must accept the interpreter's translation of the witness's testimony. You must disregard any different meaning.

2.8 IMPEACHMENT EVIDENCE — WITNESS

The evidence that a witness [e.g., has been convicted of a crime, lied under oath on a prior occasion, etc.] may be considered, along with all other evidence, in deciding whether or not to believe the witness and how much weight to give to the testimony of the witness and for no other purpose.

2.10 USE OF INTERROGATORIES OF A PARTY

Evidence was presented to you in the form of answers of one of the parties to written interrogatories submitted by the other side. These answers were given in writing and under oath, before the actual trial, in response to questions that were submitted in writing under established court procedures. You should consider the answers, insofar as possible, in the same way as if they were made from the witness stand.

2.11 EXPERT OPINION

Some witnesses, because of education or experience, are permitted to state opinions and the reasons for those opinions.

Opinion testimony should be judged just like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the reasons given for the opinion, and all the other evidence in the case.

2.13 CHARTS AND SUMMARIES IN EVIDENCE

Certain charts and summaries may be received into evidence to illustrate information brought out in the trial. Charts and summaries are only as good as the underlying evidence that supports them. You should, therefore, give them only such weight as you think the underlying evidence deserves.

3.1 DUTY TO DELIBERATE

When you begin your deliberations, you should elect one member of the jury as your presiding juror. That person will preside over the deliberations and speak for you here in court.

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all of the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

Do not hesitate to change your opinion if the discussion persuades you that you should. Do not come to a decision simply because other jurors think it is right.

It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not change an honest belief about the weight and effect of the evidence simply to reach a verdict.

3.2 COMMUNICATION WITH COURT

If it becomes necessary during your deliberations to communicate with me, you may send a note through the marshal, signed by your presiding juror or by one or more members of the jury. No member of the jury should ever attempt to communicate with me except by a signed writing; I will communicate with any member of the jury on anything concerning the case only in writing, or here in open court. If you send out a question, I will consult with the parties before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone—including me—how the jury stands, numerically or otherwise, until after you have reached a unanimous verdict or have been discharged. Do not disclose any vote count in any note to the court.

3.3 RETURN OF VERDICT

A verdict form has been prepared for you. After you have reached unanimous agreement on a verdict, your presiding juror will fill in the form that has been given to you, sign and date it, and advise the court that you are ready to return to the courtroom.

5.3 DAMAGES — MITIGATION

The plaintiff has a duty to use reasonable efforts to mitigate damages. To mitigate means to avoid or reduce damages.

The defendants have the burden of proving by a preponderance of the evidence:

(1) that the plaintiff failed to use reasonable efforts to mitigate damages; and

(2) the amount by which damages would have been mitigated.

5.4 DAMAGES ARISING IN THE FUTURE — DISCOUNT TO
PRESENT CASH VALUE

Any award for future economic damages must be for the present cash value of those damages.

Noneconomic damages such as pain and suffering are not reduced to present cash value.

Present cash value means the sum of money needed now, which, when invested at a reasonable rate of return, will pay future damages at the times and in the amounts that you find the damages will be incurred.

The rate of return to be applied in determining present cash value should be the interest that can reasonably be expected from safe investments that can be made by a person of ordinary prudence, who has ordinary financial experience and skill. You should also consider decreases in the value of money which may be caused by future inflation.

1 9.1 SECTION 1983 CLAIM — INTRODUCTORY INSTRUCTION

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3 The plaintiff brings his claims under the federal statute,
4 42 U.S.C. §1983, which provides that any person or persons who,
5 under color of law, deprives another of any rights, privileges, or
6 immunities secured by the Constitution or laws of the United States
7 shall be liable to the injured party.

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1 9.2 SECTION 1983 CLAIM AGAINST DEFENDANT
2 IN INDIVIDUAL CAPACITY – ELEMENTS AND BURDEN OF PROOF

3
4 In order to prevail on their §1983 claim against the
5 defendants, Andrew Salinas, Chief John Crombach, City of Oxnard
6 Police Department, and the City of Oxnard, the plaintiffs must
7 prove each of the following elements by a preponderance of the
8 evidence:

- 9
- 10 1. the defendant acted under color of law; and
 - 11 2. the acts of the defendant deprived the plaintiffs of
12 their particular rights under the United States Consti-
13 tution as explained in later instructions.

14 A person acts “under color of law” when the person acts or
15 purports to act in the performance of official duties under any
16 state, county, or municipal law, ordinance, or regulation. The
17 parties have stipulated that the defendants acted under color of
18 law.

19 If you find the plaintiffs have proved each of these elements,
20 and if you find that the plaintiffs have proved all the elements
21 they are required to prove under Instructions 9.2, 9.3, 9.4, 9.5,
22 9.6, 9.7, 9.11, 9.12, 9.14, 9.18, 9.19, 9.29, 9.22, or Special
23 Instruction No. ____, your verdict should be for the plaintiffs.
24 If, on the other hand, the plaintiffs have failed to prove any one
25 or more of these elements of each and every instruction, your
26 verdict should be for the defendants.
27
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9.8 CAUSATION

In order to establish that the act[s] of the defendants, Andrew Salinas, Chief John Crombach, City of Oxnard Police Department, and City of Oxnard, deprived the plaintiffs of their particular rights under the United States Constitution as explained in later instructions, the plaintiffs must prove by a preponderance of the evidence that the acts were so closely related to the deprivation of the plaintiffs' rights as to be the moving force that caused the ultimate injury.

9.18 PARTICULAR RIGHTS—FOURTH AMENDMENT—UNREASONABLE
SEIZURE OF PERSON—GENERALLY

As previously explained, the plaintiff has the burden to prove that the acts of the defendants, Andrew Salinas, Chief John Crombach, City of Oxnard Police Department, and the City of Oxnard, deprived the plaintiffs of particular rights under the United States Constitution. In this case, the plaintiffs allege the defendant deprived them of their rights under the Fourth Amendment to the Constitution when he shot and killed Tommy Barrera Jr.

Under the Fourth Amendment, a person has the right to be free from an unreasonable seizure of his person. In order to prove the defendant[s] deprived the plaintiff of this Fourth Amendment right, the plaintiff must prove the following additional elements by a preponderance of the evidence:

1. Andrew Salinas seized the plaintiff's person;
2. in seizing the plaintiff's person, Andrew Salinas acted intentionally; and
3. the seizure was unreasonable.

A defendant "seizes" the plaintiff's person when he restrains the plaintiff's liberty by physical force or a show of authority. A person's liberty is restrained when, under all of the circumstances, a reasonable person would not have felt free to ignore the presence of law enforcement officers and to go about his business.

In determining whether a reasonable person in the plaintiff's position would have felt free to leave, consider all of the circumstances, including

1. the number of officers present;
2. whether weapons were displayed;
3. whether the encounter occurred in a public or nonpublic setting;
4. whether the officer's manner would imply that compliance would be compelled; and
5. whether the officers advised the plaintiff that he was free to leave.

A person acts "intentionally" when the person acts with a conscious objective to engage in particular conduct. Thus, the plaintiff must prove the defendant meant to engage in the act[s] that caused a seizure of the plaintiff's person. Although the plaintiff does not need to prove the defendant intended to violate the plaintiff's Fourth Amendment rights, it is not enough if the plaintiff only proves the defendant acted negligently, accidentally or inadvertently in conducting the search.

9.19 PARTICULAR RIGHTS—FOURTH AMENDMENT—UNREASONABLE
SEIZURE OF PERSON—EXCEPTION TO WARRANT
REQUIREMENT—*TERRY* STOP

In general, a seizure of a person for an investigatory stop is reasonable if, under all of the circumstances known to the officer at the time:

1. the officer had a reasonable suspicion that the person seized was engaged in criminal activity and
2. the length and scope of the seizure was reasonable.

In order to prove the seizure in this case was unreasonable, the plaintiff must prove by a preponderance of the evidence that the officer lacked reasonable suspicion to stop him and that the length and scope of the stop was excessive.

"Reasonable suspicion" is an objectively reasonable belief based on specific and articulable facts.

In determining whether the length and scope of the seizure was reasonable, consider how the officer restricted the plaintiff's liberty and the officer's reason[s] for using such methods and for the length of the stop.

9.20 PARTICULAR RIGHTS—FOURTH AMENDMENT—UNREASONABLE
SEIZURE OF PERSON—PROBABLE CAUSE ARREST

In general, a seizure of a person by arrest without a warrant is reasonable if the arresting officer had probable cause to believe the plaintiff have committed or was committing a crime.

In order to prove the seizure in this case was unreasonable, the plaintiff must prove by a preponderance of the evidence that he was arrested without probable cause.

"Probable cause" exists when, under all of the circumstances known to the officer at the time, an objectively reasonable police officer would conclude there is a fair probability that the plaintiff have committed or was committing a crime.

Under state law, it is a crime to attempt grand theft auto in violation of California Vehicle Code sections 664/10851; draw/exhibit a deadly weapon with intent to resist arrest and detention in the presence of a peace officer in violation of California Penal Code Section 417.8; and assault a police officer with a deadly weapon in violation of California Penal Code Section 245(c).

9.3 SECTION 1983 CLAIM AGAINST SUPERVISORY
DEFENDANT IN INDIVIDUAL CAPACITY—ELEMENTS
AND BURDEN OF PROOF

In order to prevail on their §1983 claim against the supervisory defendants, Chief John Crombach, the City of Oxnard, and the City of Oxnard Police Department, the plaintiff must prove each of the following elements by a preponderance of the evidence:

1. the defendant acted under color of law;
2. the act of the defendants' subordinate, Andrew Salinas, deprived the plaintiff of [his] [her] particular rights under the United States Constitution as explained in later instructions; and
3. the defendant set in motion a series of acts by [his] [her] subordinates that [he] [she] knew or reasonably should have known would cause the subordinates to deprive the plaintiff of these rights.

A person acts "under color of law" when the person acts or purports to act in the performance of official duties under any state, county, or municipal law, ordinance, or regulation. The parties have stipulated that the defendant acted under color of law.

If you find the plaintiff has proved each of these elements, and if you find that the plaintiff has proved all the elements [he] [she] is required to prove under Instructions 9.2, 9.3, 9.4, 9.5, 9.6, 9.7, 9.11, 9.12, 9.14, 9.18, 9.19, 9.29, 9.22, or Special Instruction No. _____, your verdict should be for the plaintiff. If, on the other hand, the plaintiff has failed to prove any one or more of these elements, your verdict should be for the defendant.

9.4 SECTION 1983 CLAIM AGAINST LOCAL GOVERNING
BODY DEFENDANTS BASED ON OFFICIAL POLICY, PRACTICE,
OR CUSTOM — ELEMENTS AND BURDEN OF PROOF

In order to prevail on their §1983 claim against defendants Chief John Crombach, City of Oxnard Police Department, and the City of Oxnard alleging liability based on an official policy, practice, or custom, the plaintiff must prove each of the following elements by a preponderance of the evidence:

1. Defendant Andrew Salinas acted under color of law;
2. the act[s] of defendant Andrew Salinas deprived the plaintiffs of their particular rights under the United States Constitution as explained in later instructions; and
3. Defendant Andrew Salinas acted pursuant to an expressly adopted official policy or a longstanding practice or custom of defendants Chief John Crombach, City of Oxnard Police Department, and the City of Oxnard.

A person acts "under color of law" when the person acts or purports to act in the performance of official duties under any state, county, or municipal law, ordinance, or regulation. The parties have stipulated that defendant Andrew Salinas acted under color of law.

"Official policy" means a rule or regulation promulgated, adopted, or ratified by defendants City of Oxnard and City of Oxnard Police Department.

"Practice or custom" means any permanent, widespread, well-settled practice or custom that constitutes a standard operating procedure of defendants City of Oxnard and City of Oxnard Police Department.

If you find the plaintiffs have proved each of these elements, and if you find that the plaintiffs have proved all the elements they are required to prove under Instruction 9.2, 9.3, 9.4, 9.5, 9.6, 9.7, 9.11, 9.12, 9.14, 9.18, 9.19, 9.20, 9.22, or Special Instruction No. _____, your verdict should be for the plaintiff. If, on the other hand, the plaintiffs have failed to prove any one or more of these elements, your verdict should be for the defendant.

9.5 SECTION 1983 CLAIM AGAINST LOCAL GOVERNING
BODY DEFENDANTS BASED ON ACT OF FINAL
POLICYMAKER—ELEMENTS AND BURDEN OF PROOF

In order to prevail on their §1983 claim against defendants City of Oxnard and City of Oxnard Police Department alleging liability based on the act of a final policymaker, the plaintiff must prove each of the following elements by a preponderance of the evidence:

1. Chief John Crombach acted under color of law;
2. the act[s] of Chief John Crombach deprived the plaintiffs of their particular rights under the United States Constitution as explained in later instructions;
3. Chief John Crombach had final policymaking authority from defendant City of Oxnard and City of Oxnard Police Department concerning these act[s]; and
4. when Chief John Crombach engaged in these act[s], he was acting as a final policymaker for defendant City of Oxnard and City of Oxnard Police Department.

The parties have stipulated that Chief John Crombach acted under color of law.

I instruct you that Chief John Crombach had final policymaking authority from defendant City of Oxnard and City of Oxnard Police Department concerning the act[s] at issue and, therefore, the third element requires no proof.

If you find the plaintiff has proved each of these elements, and if you find that the plaintiff has proved all the elements [he] [she] is required to prove under 9.2, 9.3, 9.4, 9.5, 9.6, 9.7, 9.11, 9.12, 9.14, 9.18, 9.19, 9.20, 9.22, or Special Instruction No. _____, your verdict should be for the plaintiff. If, on the other hand, the plaintiff has failed to prove any one or more of these elements, your verdict should be for the defendant.

9.6 SECTION 1983 CLAIM AGAINST LOCAL GOVERNING
BODY DEFENDANTS BASED ON RATIFICATION—
ELEMENTS AND BURDEN OF PROOF

In order to prevail on their §1983 claim against defendants City of Oxnard, City of Oxnard Police Department, and Chief John Crombach alleging liability based on ratification by a final policymaker, the plaintiff must prove each of the following elements by a preponderance of the evidence:

1. Andrew Salinas acted under color of law;
2. the acts of Andrew Salinas deprived the plaintiffs of their particular rights under the United States Constitution as explained in later instructions;
3. Chief John Crombach acted under color of law;
4. Chief John Crombach had final policymaking authority from defendant Oxnard and City of Oxnard Police Department concerning the acts of Andrew Salinas; and
5. Chief John Crombach ratified Andrew Salinas's act and the basis for it — that is, Chief John Crombach knew of and specifically approved of the employee's acts.

The parties have stipulated that defendants Andrew Salinas and Chief John Crombach acted under color of law.

I instruct you that Chief John Crombach had final policymaking authority from defendant City of Oxnard and City of Oxnard Police Department concerning the acts at issue and, therefore, the first and fourth elements requires no proof.

If you find the plaintiff has proved each of these elements, and if you find that the plaintiff has proved all the elements they is required to prove under 9.2, 9.3, 9.4, 9.5, 9.6, 9.7, 9.11, 9.12, 9.14, 9.18, 9.19, 9.20, 9.22, or Special Instruction No._____, your verdict should be for the plaintiff. If, on the other hand, the plaintiff has failed to prove any one or more of these elements, your verdict should be for the defendant.

1 9.7 SECTION 1983 CLAIM AGAINST LOCAL
2 GOVERNING BODY DEFENDANTS BASED ON POLICY
3 OF FAILURE TO TRAIN — ELEMENTS AND BURDEN OF PROOF

4 In order to prevail on their §1983 claim against defendants
5 Chief John Crombach, City of Oxnard Police Department, and the City
6 of Oxnard alleging liability based on a policy of failure to train
its police officers, the plaintiffs must prove each of the
following elements by a preponderance of the evidence:

- 7 1. the acts of Andrew Salinas deprived the plaintiff of his
8 particular rights under the laws of the United States
 Constitution as explained in later instructions;
- 9 2. Andrew Salinas acted under color of law;
- 10 3. the training policies of defendants Chief John Crombach,
11 City of Oxnard Police Department, and the City of Oxnard
12 were not adequate to train its police officers to handle
 the usual and recurring situations with which they must
 deal;
- 13 4. defendants Chief John Crombach, City of Oxnard Police
14 Department, and the City of Oxnard were deliberately
 indifferent to the obvious consequences of their failure
15 to train their police officers adequately; and
- 16 5. the failure of defendants Chief John Crombach, City of
17 Oxnard Police Department, and the City of Oxnard to
18 provide adequate training caused the deprivation of the
19 plaintiff's rights by Andrew Salinas; that is, the
 defendant's failure to train is so closely related to the
 deprivation of the plaintiff's rights as to be the moving
 force that caused the ultimate injury.

20 A person acts "under color of law" when the person acts or
21 purports to act in the performance of official duties under any
22 state, county, or municipal law, ordinance, or regulation. The
parties have stipulated that the defendant's employee acted under
color of law.

23 "Deliberate indifference" is the conscious choice to disregard
24 the consequences of one's acts or omissions. The plaintiff may
25 prove deliberate indifference in this case by showing that defen-
26 dants Chief John Crombach, City of Oxnard Police Department, and
the City of Oxnard knew their failure to train adequately made it
highly predictable that their police officers would engage in
conduct that would deprive persons such as the plaintiff of their
rights.

27 If you find the plaintiffs have proved each of these elements,
28 and if you find that the plaintiffs have proved all the elements
they are required to prove under Instructions 9.2, 9.3, 9.4, 9.5,

1 9.6, 9.7, 9.11, 9.12, 9.14, 9.18, 9.19, 9.20, 9.22, or Special
2 Instruction No._____, your verdict should be for the plaintiffs.
3 If, on the other hand, the plaintiffs have failed to prove any one
or more of these elements, your verdict should be for the
defendants.